

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WOLFRAM ARNOLD, ERIK
FROESE, TRACY HAWKINS,
JOSEPH KILLIAN, LAURA CHAN
PYTLARZ, and ANDREW
SCHLAIKJER,

Plaintiffs,

v.

X CORP. f/k/a TWITTER, INC., X
HOLDINGS CORP. f/k/a X
HOLDINGS I, INC. and ELON MUSK,

Defendants.

C.A. No. 1:23-cv-00528

**PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE OF AGREEMENT
AND PLAN OF MERGER IN SUPPORT OF OPPOSITION TO
MOTIONS TO DISMISS**

Plaintiffs Wolfram Arnold, Erik Froese, Tracy Hawkins, Joseph Killian, Laura Chan Pytlarz, and Andrew Schlaikjer (collectively, "Plaintiffs") hereby request that the Court take judicial notice of an Agreement and Plan of Merger by and between Intercontinental Exchange Inc., Board of Trade of the City of New York, Inc. and CFC Acquisition Co., dated as of September 14, 2006 (the "ICE Merger Agreement") and the complaint filed on July 29, 2022 in the Delaware Court of Chancery in Civil Action No., 2022-0666-KSJM, *Luigi Crispo v. Elon R. Musk et al.* (the "Complaint").

Federal Rule of Evidence 201 (“Rule 201”) allows a court to take judicial notice of facts that are “not subject to reasonable dispute” because they are either (1) “generally known within the trial court’s territorial jurisdiction” or (2) “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). “Under Rule 201(d) . . . a district court must take judicial notice ‘if requested by a party and supplied with the necessary information.’” Fed. R. Evid. 201(d).

“SEC filings . . . are matters of public record of which the court can take judicial notice.” *Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014) (citing *City of Pittsburgh v. W. Penn. Power Co.*, 147 F.3d 256, 259 (3d Cir. 1998); *Pension Benefit Guar. Corp.*, 998 F.2d 1192, 1197 (3d Cir. 1998)); see *In re NAHC, Inc. Securities Litig.*, 306 F.2d 1314, 1331 (3d Cir. 2002); *Oran v. Stafford*, 226 F.3d 275, 289 (3d Cir. 2000) (“a court, in deciding a motion for judgment on the pleadings, [may] take judicial notice of properly[] authenticated public disclosure documents filed with the SEC.”).

Attached as Exhibit 1 is a true and correct copy of the ICE Merger Agreement. This document was filed with the United States Securities & Exchange Commission (“SEC”) and was obtained on today’s date from the public website maintained by the SEC, at the following address:

<https://www.sec.gov/Archives/edgar/data/1174746/000119312506237321/dex21.htm>.

Because the ICE Merger Agreement satisfies the criteria set forth in Rule 201, Plaintiffs respectfully request that the Court take judicial notice of it in consideration of Plaintiffs' opposition to Defendants' motions to dismiss.

State court filings are public records subject to judicial notice. *See e.g., Lifeng Lee Hsu v. Great Seneca Fin. Corp.*, 2009 WL 29445, at *8 n.32 (D. Del. Jan. 5, 2009).

Attached as Exhibit 2 is a true and correct of the complaint filed on July 29, 2022 in the Delaware Court of Chancery in Civil Action No., 2022-0666-KSJM, *Luigi Crispo v. Elon R. Musk et al.* The Complaint satisfies the criteria set forth in Rule 201 and, accordingly, Plaintiffs respectfully request that the Court take judicial notice of it in consideration of Plaintiffs' opposition to Defendants' motions to dismiss.

Conclusion

For the reasons set forth above, Plaintiffs respectfully request that the Court take judicial notice of the ICE Merger Agreement and the Complaint.

Respectfully submitted,

Dated: August 21, 2023

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